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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. NICOLAS CESAREO, Defendant.	Criminal Case No. 08CR0201-W HEARING DATE: June 16, 2008 TIME: 2:00 p.m. UNITED STATES' RESPONSE TO DEFENDANT'S MOTIONS: (1) DISMISS DUE TO INVALID DEPORTATION. TOGETHER WITH STATEMENT OF FACTS, MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Christopher M. Alexander, Assistant United States Attorney, and hereby files its Response and Opposition to Defendant's above-referenced motion. This Response and Opposition is based upon the files and records of the case together with the attached statement of facts and memorandum of points and authorities.

I

STATEMENT OF THE CASE

On January 23, 2007, a federal grand jury in the Southern District of California returned an Indictment charging Defendant Nicolas Cesareo ("Defendant") with being a deported alien attempting to enter the United States after deportation in violation of 8 U.S.C. § 1326. Defendant was arraigned on the Indictment and entered a not guilty plea. The Court set a motion hearing date for February 11, 2008.

On January 29, 2008, Defendant filed a motion to compel discovery and for leave to file further motions. The United States responded. On April 29, 2008, Defendant filed a motion to dismiss due to an invalid deportation. The United States now responds to Defendant's motion.

II

DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY

Defendant's criminal history includes a conviction for robbery on July 11, 2006. He received a total of two years for this conviction.

Defendant was ordered deported on September 22, 2005 and was most recently removed on September 28, 2007.

III

MOTION TO DISMISS SHOULD BE DENIED

Defendant argues that the Indictment should be dismissed due to an invalid deportation for two reasons. First, he argues that the Immigration Judge failed to comply with 8 C.F.R. § 1003.25(b). Under the C.F.R., if the alien is unrepresented, the Immigration Judge must determine that the alien's "waiver is voluntary, knowing, and intelligent." Defendant argues that in the Order, the immigration judge did not explicitly find that Defendant's waiver of the right to a hearing was valid. However, the Order provides that "[t]he respondent, representing himself, has submitted as statement wherein he waives a personal hearing before the Immigrations Judge. . . ." (Def.'s Ex. A.) The "statement" to which the Order applies is a Stipulation in which Defendant agrees that his waiver is voluntary, knowing, and intelligent. (Def.'s Ex. B.) The plain language of the Order finds waiver. Undoubtedly, the Immigration Judge was aware that for the waiver to be a valid, it must be voluntary, knowing, and intelligent. Even if not explicit, it is implicit in the Order.

Second, he argues that the Immigration Judge did not inform him that he was entitled to voluntary departure under § 1229c. However, the Order provides that "[t]he respondent has made no application for relief from removal proceedings such as would allow him to remain in the United States, but instead requests issuance of an order by the Court for his removal to his native country." (Def.'s Ex. A.) The plain language of the Order finds that Defendant never requested voluntary departure. Moreover, Defendant was not eligible for voluntary departure.

A. STIPULATED REMOVALS ARE AUTHORIZED BY CONGRESS

Stipulated removals are expressly authorized by Congress. As provided in Title 8, the Attorney General is required to promulgate a regulation governing such a procedure:

> The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien's representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.

8 U.S.C. § 1229a(d).

The pertinent regulation is set forth at 8 C.F.R. § 1003.25(b)[1/], which provides as follows:

> (b) Stipulated request for order; waiver of hearing. An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien's representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with § 1003.16(b). A stipulated order shall constitute a conclusive determination of the

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[1/]This regulation was previously codified at 8 C.F.R. § 3.25(b). In 2003, following the creation of the Department of Homeland Security, it was transferred and redesignated at section 1003.25(b). See 98 Fed. Reg. 9824-01 (Feb. 28, 2003).

> alien's deportability or removability from the United States. The stipulation shall include:
>
> (1) An admission that all factual allegations contained in the charging document are true and correct as written;
>
> (2) A concession of deportability or inadmissibility as charged;
>
> (3) A statement that the alien makes no application for relief under the Act;
>
> (4) A designation of a country for deportation or removal under section 241(b)(2)(A)(I) of the Act;
>
> (5) A concession to the introduction of the written stipulation of the alien as an exhibit to the Record of Proceeding;
>
> (6) A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;
>
> (7) A statement that the alien will accept a written order for his or her deportation, exclusion or removal as a final disposition of the proceedings; and
>
> (8) A waiver of appeal of the written order of deportation or removal.

8 C.F.R. § 1003.25(b).

Pursuant to a stipulated removal, an alien "concedes his deportability, waives his right to a hearing, waives all discretionary forms of relief from deportability, and waives his right to appeal the immigration judge's order. . . . The immigration judge, without the presence of either the alien or the representative from the government, examines the stipulation and issues an order of deportation if it appears the alien voluntarily, knowingly, and intelligently entered into the stipulation." United States v. Ramnath, 958 F. Supp. 99, 101 (E.D.N.Y. 1997) (citing former 8 C.F.R. § 3.25(b)).

B. DEFENDANT'S 2005 STIPULATED REMOVAL COMPLIES WITH THE C.F.R.

Attached to Defendant's Motion as Exhibits A through C are true and correct copies of documents pertaining to Defendant's 2005 stipulated removal: (1) a Notice to Appear ("NTA"), dated August 31, 2005; (2) a "Stipulated Request for Removal Order and Waiver of Hearing," dated September 21, 2005; (3) a "Government's Concurrence to Stipulated Request for Removal Order and Waiver of Hearing," undated; and (4) a "Decision and Order of the Immigration Judge," dated September 21, 2005.

The Stipulation executed by Defendant satisfies each of the eight requirements set forth in 8 C.F.R. § 1003.25(b). (Def.'s Ex. B.) Namely, the Stipulation includes:

(1) an admission that all factual allegations contained in the charging document are true and correct, at **paragraph 4** ("I admit that all of the factual allegations contained in the NTA are true and correct.");

(2) a concession of deportability or inadmissibility as charged, at **paragraph 4** ("I also agree that I am inadmissible or deportable and will be removed fromt he United States based on the charges(s) on the NTA.");

(3) a statement that Defendant is making no application for relief under the Immigration and Nationality Act, at **paragraph 3(B)** ("I understand that, if I wish to request any relief from removal, I should request a hearing before an Immigration Judge. Such relief may include, but is not limited to, voluntary departure, asylum, withholding or [sic] removal, relief under Article 3 of the Convention Against Torture, adjustment of status, change of status, suspension or cancellation of removal, registry, and any waivers of removabilty. I do not want to apply for any relief from removal for which I may be eligible");

(4) a designation of a country for removal, at **paragraph 5** ("I choose _Mexico_ as the country to be designated for removal.");

(5) a concession to the introduction of the written stipulation as an exhibit to the Record of Proceeding, at **paragraph 7** ("I understand and agree that this written stipulation will be made an exhibit to the Record of the Proceedings for the Immigration Judge to consider.");

(6) a statement that Defendant understands the consequences of the stipulated request and that he is entering the request voluntarily, knowingly and intelligently, at **paragraph 10** ("NC I have read or ___ I have had read to me in a language I understand this entire stipulation. I fully understand its consequences. I submit this request for removal voluntarily, knowingly and intelligently. I realize that by signing the stipulation, I will be removed from the United States.");

(7) a statement that Defendant will accept a written order for his deportation, exclusion or removal as a final disposition of the proceedings, at **paragraph 8** ("I understand and agree to accept a written order for my removal as a final disposition of these proceedings.."); and

(8) a waiver of appeal of the written order of deportation or removal, also at **paragraph 8** ("I waive my right to appeal the written order of the Immigration Judge").

/ / /

Therefore, the September 2005 removal was valid. Defendant was given an opportunity to appear before an immigration judge, but he voluntarily, knowingly and intelligently waived that right. As such, his Stipulation to removal was a "conclusive determination of [his] deportability or removability from the United States." 8 C.F.R. § 1003.25(b).

C. THE NINTH CIRCUIT HAS EXPRESSLY UPHELD STIPULATED REMOVALS

The conclusion that Defendant's September 2005 removal is valid does not just follow from the plain language of the governing regulation. It also finds support in caselaw. The Ninth Circuit has squarely held that where, as here, a stipulation to removal shows that an alien "was advised of all relevant rights, waived them and conceded his deportability," the stipulation "satisfies the government's burden of showing a valid deportation for purposes of section 1326." United States v. Galicia-Gonzalez, 997 F.2d 602, 603-04 (9th Cir. 1993) (per curiam). In so holding, Galicia-Gonzalez noted that official records which show on their face a valid waiver of rights in connection with a deportation proceeding are "presumed to be correct." Id. (citing United States v. Carroll, 932 F.2d 823, 825 (9th Cir. 1991)). The Court also held that stipulated removals **cannot** be challenged on the basis that a hearing before an immigration judge might have shown the alien was eligible for relief from removal. Id. at 604 ("Even if a hearing had been held, it would have accomplished nothing, because defendant had given up the game by conceding he was deportable. Defendant therefore cannot show prejudice under Proa-Tovar.").

D. DEFENDANT CANNOT MEET THE REQUIREMENTS UNDER SECTION 1326(d) TO CHALLENGE THE VALIDITY OF HIS DEPORTATION

Aside from the fact that the September 2005 deportation is valid on its face, Defendant's motion to dismiss should be denied because he cannot meet the requirements to collaterally attack the deportation. A defendant charged with being a deported alien found in the United States in violation of 8 U.S.C. § 1326 may collaterally attack a deportation order. See United States v. Mendoza-Lopez, 481 U.S. 828, 837-39 (1987). To sustain a collateral attack, the defendant must establish that:

(1) he exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived him of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

8 U.S.C. § 1326(d). Defendant fails to meet all three requirements and thus, his motion to dismiss should be denied.

1. Defendant Did Not Exhaust Administrative Remedies

In order to collaterally challenge an underlying removal in an illegal re-entry case, a defendant must exhaust his administrative remedies. 8 U.S.C. § 1326(d)(1); United States v. Garza-Sanchez, 217 F.3d 806, 808 (9th Cir. 2000) ("A defendant charged under 8 U.S.C. § 1326 may not collaterally attack the underlying deportation order if he or she did not exhaust administrative remedies in the deportation proceedings, including direct appeal of the deportation order."). This generally means the alien must appeal his order of removal to the Board of Immigration Appeals ("BIA"). Id.; cf. Rashtabadi v. INS, 23 F.3d 1562, 1567 (9th Cir. 1994) ("Failure to raise an issue in an appeal to the BIA constitutes a failure to exhaust remedies with respect to that question and deprives this court of jurisdiction to hear the matter.").

Here, in stipulating to his removal in 2005, Defendant clearly failed to appeal his removal order to the BIA. After all, an express term of his written stipulation was a waiver of the right to appeal. (See Exhibit B.) This was after he was advised he may be eligible for "voluntary departure" in the Stipulation. (See Exhibit B.) Moreover, the Immigration Judge found that "appeal [was] waived by both [Defendant and the United States]." (See Exhibit A.)

Defendant claims that he is exempt for the exhaustion requirement of 8 U.S.C. 1326(d) because "Mr. Cesareo made an unconsidered and uniformed appellate waiver." (Def.'s Mot. at 11.) However, official records which show on their face a valid waiver of rights in connection with a deportation proceeding are "presumed to be correct." Galicia-Gonzalez, 997 F.2d at 603-04 (citing United States v. Carroll, 932 F.2d 823, 825 (9th Cir. 1991)). Thus, where the United States introduces official records which on their face show a valid waiver of rights in connection with a deportation proceeding, the burden shifts to the defendant to come forward with evidence then tending to prove the waiver was invalid. Id. at 603.

Akin to Galicia-Gonzalez, Defendant has not presented any evidence to show that the waiver was invalid. Even the declaration does not provide evidence to show the Stipulation was involuntary. Defendant was given "a form and asked [] to read it and sign." (Def.'s Ex. F.) The Stipulation to which

Defendant agreed states that he read and understood the Stipulation. Now, after he has been charged, he asserts that "I did not understand the significance of my rights and the consequences of my signature on the document." (Def.'s Ex. F.)

Even if he did not understand the later significance of the Stipulation, it does not matter. By way of analogy, in the area of appellate waivers, the Ninth Circuit has made clear that a defendant's waiver is not invalidated by failure to foresee future claims. United States v. Johnson, 67 F.3d 200, 202-03 (9th Cir. 1995). The Ninth Circuit has also rejected the contention that a plea is rendered infirm because the defendant did not know exactly what issues would arise after sentencing. United States v. Navarro-Botello, 912 F.2d 318, 320 (9th Cir. 1990). "Just because the choice looks different to [the defendant] with the benefit of hindsight does not make the choice involuntary." Id.; see also United States v. Cortez-Arias, 425 F.3d 547, 548 (9th Cir. 2005) (ruling a defendant may not renege even when a later clarification in law shows he has a claim).

Moreover, the Stipulation that he signed specifically stated that he may be entitled to relief. Defendant's claim that "I believed that I did not have any relief from deportation" is not supported by the Stipulation. In the declaration, Defendant never states that his rights were improperly explained to him, or he was somehow coerced into waiving his rights. Absent that such a showing, he cannot satisfy his burden and the waiver is presumed to be valid.

Additionally, Defendant's claim that he is exempt from the exhaustion requirement also fails. Not only was Defendant ineligible for voluntary departure, the Ninth Circuit has held that stipulated removals cannot be challenged on the basis that a hearing before an immigration judge might have shown the alien was eligible for relief from removal. Galicia-Gonzalez, 997 F.2d at 604 ("Even if a hearing had been held, it would have accomplished nothing, because defendant had given up the game by conceding he was deportable. Defendant therefore cannot show prejudice under Proa-Tovar.").

Contrary to Defendant's argument, he is not exempt for the exhaustion requirement and cannot meet the first prong to collaterally attack his deportation. Therefore, Defendant's motion to dismiss should be denied.

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2. The Deportation Proceedings Provided Defendant with the Opportunity for Judicial Review

Defendant is apparently arguing that he was deprived of the opportunity for judicial review because of the failure of the Immigration Judge to obtain a valid appellate waiver and failure to inform Defendant of his eligibility for relief from deportation. Defendant apparently claims that he meets the second prong of 8 U.S.C. § 1326(d) for the same reasons he claims he is exempt from meeting the first prong. And for the same reasons as explained above, Defendant's argument fails. Furthermore, as in Galicia-Gonzalez, the Stipulation in this case, shows that Defendant was advised of all his rights under the immigration laws. Specifically, the Stipulation shows that Defendant was advised of and waived his appellate rights. Defendant was advised that he may qualify for one or more forms of relief from removal, including voluntary departure and that he waived his right to apply for relief. Lastly, the Immigration Judge reviewed Defendant's Stipulation wherein he waives a personal appearance before an immigration judge. The Order provides that "[t]he respondent, representing himself, has submitted as statement wherein he waives a personal hearing before the Immigrations Judge. . . ." (Def.'s Ex. A.) Further, the Order provides that "[t]he respondent has made no application for relief from removal proceedings such as would allow him to remain in the United States, but instead requests issuance of an order by the Court for his removal to his native country." (Def.'s Ex. A.)

Since the Immigration Judge reviewed the Stipulation which showed that Defendant was advised of and waived his rights, the September 2005 deportation proceedings provided Defendant with the opportunity for judicial review. Defendant fails to meet the second prong of 1326(d) and therefore, his motion to dismiss should be denied.

3. The Entry of the Removal Order was Not Fundamentally Unfair

Finally, Defendant cannot show his removal was fundamentally unfair. An underlying deportation order is "fundamentally unfair" if (1) a defendant's due process rights were violated by defects in his deportation proceeding, and (2) he suffered prejudice as a result of the defects. United States v. Ubaldo-Figueroa, 364 F.3d 1042, 1048 (9th Cir. 2004); United States v. Arrieta, 224 F.3d 1076, 1079 (9th Cir. 2000); United States v. Estrada-Torres, 179 F.3d 776, 780-81 (9th Cir. 1999), overruled in part on other grounds, United States v. Rivera-Sanchez, 247 F.3d 905 (9th Cir. 2001).

a. Defendant's Deportation Proceeding Did Not Violate Due Process

Defendant claims that his due process rights were violated. His argument fails since he waived any right to a hearing and he was not eligible for voluntary departure.

First, the Immigration Judge reviewed the Notice to Appear, the Stipulation, and the United States' Concurrence before signing the Order to remove Defendant from the United States to Mexico. (Def.'s Ex. A.) The Order provides that "[t]he respondent, representing himself, has submitted as statement wherein he waives a personal hearing before the Immigrations Judge. . . ." (Def.'s Ex. A.) The statement being the Stipulation which states that Defendant's waiver is voluntary, knowing, and intelligent. To have a valid waiver, the Immigration Judge must have recognized that Defendant's waiver was voluntary, knowing, and intelligent.

Second, Defendant claims that since he had not yet been convicted of an aggravated felony at the time of his removal, it leaves open an avenue of voluntary departure.[2/] (Def.'s Mot. at 9.) However, Defendant was ineligible for voluntary departure. To be eligible for voluntary departure, the immigration judge must find the following: (1) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a); (2) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure; (3) the alien is not deportable under section 1227(a)(2)(A)(iii) or § 1227(a)(4); and (4) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so. 8 U.S.C. § 1229c(b)(1); see also Lopez v. INS, 184 F.3d 1097, 1100 (9th Cir. 1999).

[2/] The Stipulation provided Defendant the opportunity to apply for voluntary departure even though he was not eligible for relief. Defendant refused to pursue it. If he had pursued it, an immigration judge's order denying voluntary departure would not be subject to review on direct appeal. Alvarez-Santos v. INS, 332 F.3d 1245, 1255 (9th Cir. 2003) ("The INA provides that 'no court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure . . . .' § 1229c(f)."). Similarly, this finding should not be subject to collateral attack.

Moreover, for any collateral attack, there must be a due process violation. The alleged violation is the Immigration Judge's failure to advise Defendant that he was eligible for voluntary departure. However, the Ninth Circuit has "held that aliens have no fundamental right to discretionary relief from removal for purposes of due process and equal protection." Tovar-Landin v. Ashcroft, 361 F.3d 1164, 1166 (9th Cir. 2004); but see Ubaldo-Figueroa, 364 F.3d at 1050 (holding that it is a due process violation for an immigration judge to fail to inform an alien of his or her ability to apply for relief from removal). So, Defendant is arguing he has a fundamental right to be advised of relief he has no fundamental right to receive.

Here, Defendant failed to meet all four requirements for eligibility. Defendant offered no evidence to the Immigration Judge (or even now) as to any of these four requirements.

Next, under 8 U.S.C. § 1229c(c), aliens previously removed after being found to be inadmissible under section 8 U.S.C. § 1182(a)(6)(A) are not eligible for voluntary departure. Under section 1182(a)(6)(A), an alien present in the United States without being admitted, or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General is inadmissible.

Here, the NTA alleges that Defendant has not been admitted or paroled into the United States. (Def.'s Ex. C.) In the Stipulation, Defendant conceded that he had not been admitted or paroled into the United States. (Def.'s Ex. B.) Defendant offered no evidence to the Immigration Judge (or even now) that he had not been previously removed. Thus, since Defendant was inadmissible under section 1182(a)(6)(A), Defendant was not eligible for voluntary departure.

Finally, under 8 U.S.C. § 1229c(c), "[t]he Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens." The stipulated removal process set forth at 8 C.F.R. § 1003.25(b) limits eligibility for any relief under Title 8 including voluntary departure. Defendant followed the stipulated removal process and failed to pursue voluntary departure by requesting an immigration hearing. Thus, Defendant cannot show a due process violation.

b. Defendant Cannot Establish Prejudice

An alien bears the burden of proving prejudice. See United States v. Proa-Tovar, 975 F.3d 592, 585 (9th Cir. 1992) (en banc). To show prejudice, the alien must demonstrate that he had "plausible grounds for relief from deportation." United States v. Arce-Hernandez, 163 F. 3d 559, 563 (9th Cir. 1998). Put differently, he "must show that 'a direct appeal could . . . have yielded a different result.'" United States v. Corrales-Beltran, 192 F.3d 1311, 1318 (9th Cir. 1999). It is not enough to show that a procedural requirement was not complied with, or that an alien would have availed himself of missing procedural protections; the alien must "produce some concrete evidence indicating that the violation of a procedural protection actually had the potential for affecting the outcome of his or her deportation proceedings." United States v. Cerda-Pena, 799 F.2d 1374, 1379 (9th Cir. 1986); see also United States v. Alvarado-Delgado, 98 F.3d 492, 493 (9th Cir. 1996).

Assuming he was eligible for voluntary departure, without even looking at his equities, he cannot show prejudice. As stated in Galicia-Gonzalez, stipulated removals **cannot** be challenged on the basis that a hearing before an immigration judge might have shown the alien was eligible for relief from removal. Galicia-Gonzalez, 997 F.2d at 604 ("Even if a hearing had been held, it would have accomplished nothing, because defendant had given up the game by conceding he was deportable. Defendant therefore cannot show prejudice under Proa-Tovar.").

Even if Defendant had not "given up the game," he has the burden of showing that the Attorney General would have exercised his discretion in favor of granting relief. See United States v. Gonzalez-Valerio, 342 F.3d 1051, 1056 (9th Cir. 2003). In determining whether to grant such relief, the BIA balances "the social and humane considerations presented in an alien's favor against the adverse factors evidencing his undesirability as a permanent resident." Matter of Roberts, 20 I. & N. Dec. 294, 298 (BIA 1991). These considerations include the following:

> Favorable considerations have been found to include such factors as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred at a young age), evidence of hardship to the respondent and his family if deportation occurs, service in this country's armed forces, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character. Id. at 584-85. Among the factors deemed adverse to an alien are the nature and underlying circumstances of the exclusion or deportation ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country. Id. at 584. Moreover, one or more of these adverse considerations may ultimately be determinative of whether section 212(c) relief is in fact granted in an individual case. Id.
>
> As the negative factors grow more serious, it becomes incumbent upon the alien to introduce additional offsetting favorable evidence, which in some cases may have to involve unusual or outstanding equities. Id. at 585.

Matter of Roberts, 20 I. & N. Dec. at 298-99 (listing considerations); see also Kahn v. INS, 36 F.3d 1412, 1414 (9th Cir. 1994). If an applicant has a pattern of serious criminal activity, he must demonstrate "unusual or outstanding equities" in order to receive discretionary relief. Gonzalez-Valerio, 342 F.3d at 1056-57.

Defendant has presented no evidence of favorable equities. On the other hand, there are many unfavorable equities making relief implausible. Defendant's residence in the United States was less than

18 years. Defendant introduced no evidence of family in the United States. He showed no hardship. Defendant has no history of employment or property. Defendant did not prove any level of good character. By entering the country within inspection, Defendant showed no respect for the immigration laws. In the end, there are no favorable equities, there are many unfavorable equities, and there are no plausible grounds for relief.

IV

CONCLUSION

For the foregoing reasons, the United States asks that the Court deny Defendant's motion and limit further motions to those based on new law or facts.

DATED: June 12, 2008

Respectfully submitted,

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. NICOLAS CESAREO, Defendant.	Criminal Case No. 08CR0201-W **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, CHRISTOPHER ALEXANDER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States' Response to Defendant's Motion to (1) Dismiss Due To Invalid Deportation, together with statement of facts, memorandum of points and authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Zandra Lopez, Esq.
   Atty for Defendant

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 12, 2008.

s/Christopher M. Alexander
CHRISTOPHER M. ALEXANDER